

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 06-0124P

Sales/Use Tax

For the Period: 2003 through 2005

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ISSUE

I. **Tax Administration** – Penalty

Authority: 45 IAC 15-11-2

The taxpayer protests the assessment of a penalty.

STATEMENT OF FACTS

The taxpayer's business involves, among other things, satellite radio. The taxpayer was audited by the Department, and a proposed negligence penalty was imposed. The taxpayer protested the penalty. An administrative hearing was scheduled for April 28, 2006. In a letter faxed to the Department prior to the hearing date, the taxpayer notified the Department that it would forego the hearing. In lieu of the hearing the taxpayer stated the following: "At this time I have nothing further to add to my case. Please proceed with my discussions in my letter to you dated March 20, 2006." More facts will be provided below.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer protests the imposition of a negligence penalty. The taxpayer states in the March 20, 2006, letter:

We feel we are a very compliant taxpayer/retailer/employer. This was a misunderstanding on the interpretation of the code change. In fact, it took extensive research by our auditor to determine this tax was in fact owed.

And further, “Since the completion of the audit, we have corrected our billing to tax this revenue and we are not arguing that the tax is owed.”

45 IAC 15-11-2(b) states:

“Negligence” on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer’s carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

45 IAC 15-11-2(c) is also of import, and states that the Department “shall waive the negligence penalty ... if the taxpayer affirmatively establishes that the failure ... was due to reasonable cause and not due to negligence.” 45 IAC 15-11-2(c) notes:

In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty....

“Factors” that are of relevance for 45 IAC 15-11-2(c) include the “nature of the tax involved” and “previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.”

The taxpayer kept its tax records in good order, and this was the taxpayer’s initial audit. Also, the law governing the base tax assessment changed during the audit period.

FINDING

The taxpayer’s penalty protest is sustained.

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